IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3433 OF 2005

Mohd. Shafi Safruddin Patel ..Petitioner.

Versus

The Additional Commissioner & Ors. ..Respondents.

Mr. Nitin Pradhan with Mrs. Shubhada Khot for the Petitioner.
Mr. C.G. Gavnekar with G.S.Hirenandani with Ms. Deepa Sawant for the Respondents.

CORAM : S. A. BOBDE, J .
DATED : 01ST JULY, 2005.

P.C.:

. Rule. Rule made returnable forthwith. Shri Gavnekar waives notice for Respondents. Heard by consent.

2. The petitioner has challenged the order of the Appellate Authority, upholding his disqualification under section 14 (J-1) of the Bombay Village Panchayat Act, 1958. The said provision came into force with effect from 13.09.2001, by which a birth of third child, renders the person disqualified from contesting or continuing to be a Member of the Gram Panchayat.

3. According to the petitioner his 4th child, a daughter was born on 20th January, 2001. According to the Respondent, she was born on 22nd January, 2002. The petitioner has relied on a birth certificate, which appears to have been issued after perusal from the original register, which shows that a female child was born to one Mohd. Shafi Patel, who is the father and Suraiyya Mohd. Shafi Patel, who is the mother. This certificate bears the seal of the Grampanchayat Taloja.

4. The respondent has relied interalia, on two birth certificates. Both of them showing the date of birth of a female child, born on 22.01.2002. In one of the certificates, the father’s name is shown as Saifuddin Patel and the mother’s name is shown as Shainaz Shafi Patel. The other certificate relied on by the respondents shows that a female child was born on 22.01.2002. The father’s name in this certificate is shown as Shafi Sarfuddin Patel and the mother’s name is shown as Shainaz. Prima facie, I am of the view that this evidence, which has undoubtedly been relied on by the Authorities below is not reliable in view of the fact that the first certificate appears to

have been issued on 26th January, 2002 i.e. the Republic Day which is always a holiday and the second certificate appears to have been issued on 27th January, 2002, which is admittedly a Sunday. Both certificates do not bear either the signature or the seal of the issuing authority. In a case like this a judicial notice can be taken of the fact that this offices which are public offices must have been closed on these days.

5. The other reason which creates a serious doubt is the name of the mother. In the certificate relied upon by the petitioner, the name of the mother is Suraiyya; whereas in the certificate produced by the respondents, the name of the mother is shown as Shainaz. Admittedly, the "reports /ahavals" made under the Registration of Births and Deaths Act, the birth of the first child shows against the name of the petitioner’s wife’s as Suraiyya and not Shainaz. It is extremely difficult to imagine why the petitioner may have suddenly changed the name of his wife from Suraiyya to Shainaz. Mr. Gavnekar, learned counsel appearing for the respondents has not been able to give any reason why the petitioner may have changed his wife’s name from Suraiyya to Shainaz, around the

time or prior to the time of birth of the 4th child. These aspects assume importance in view of the fact that the birth reports relied upon by the respondents show the name of the mother of the child born on 22.01.2002 as Shainaz and not Suraiyya. It appears that there is total non-application of mind about the aspects mentioned above and this, therefore, has resulted in perversity. I am conscious that this court does not normally enter into areas of formal appreciation of evidence but the defects in evidence stare in the face and therefore, I have adverted to the same. Indeed the difference in the name of the mother is crucial. It is also felt necessary to go into this aspects since, admittedly the second appeal under the Act is also provided to an Executive Office and not a Judicial Officer.

6. It further appears from the order of the appellate authority that the appellate authority has observed that the petitioner’s wife’s name in the electoral roll is shown as Shainaz and not Suraiyya and has castigated the petitioner and members of his family from not having the electoral roll corrected. This aspect is relatively of lesser consequence than the aspects mentioned above. Admittedly, there is

female member in the petitioner's family whose name is Suraiyya. The learned counsel for the Respondent also relied on a birth certificate issued on 09.03.2004 that a female child was born to one Shainaz Shafi Patel. Here again the mother's name is shown as Shainaz. As pointed out above, there is no evidence to show that Suraiyya's name was changed to that of Shainaz. In this view of the matter, it appears that the finding that the petitioner's wife's name was changed from Suraiyya to Shainaz is based on no evidence. Admittedly, there is no averment in the application for disqualification, made by the respondents that the petitioner's wife's name is Shainaz. The impugned order is, therefore, set aside and the matter is remanded back to the Additional Commissioner of Konkan Division for fresh decision in accordance with law.

7. Having regard to the nature of the controversy and the term of the office, the learned Commissioner is directed to decide the matter as expeditiously as possible and not later than three months from the date the parties appeared before him. Parties are directed to appear before the Commissioner on 18th of July, 2005.

8. Rule made absolute in the above terms.

01.07.2005 (S.A.BOBDE,J.)

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